

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/02/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.1709 OF 2003

AND

CRIMINAL ORIGINAL PETITION NO. 1710 OF 2003

AND

CRL.M.P.Nos.751 AND 752 OF 2003.

1.M/s.Bindu Industries,
rep.by K.Bakthavatsalu,
17/18 N.S.Balaya
Bannerghatta Road,
Bangalore.

2.K.Bakthavatsalu ... Petitioners in both
the Crl.OPs.
-Vs-

Soundarya Leasing and
Hire Purchase (P) Ltd.,
rep.by Venkatakrishnan
3,Dr.Rangachari Road,
Mylapore,
Chennai-600 004. ... Respondent in both
the Crl.OPs.

Criminal Original Petitions filed under Section 482 of the Code of
Criminal Procedure for the reliefs as stated therein.

For petitioners : Mr.K.S.Viswanathan

For respondent : Mr.K.Pasupathy

:COMMON ORDER

The petitioners, who are the accused in C.C.Nos.4913 and 4914
of 19 99 on the file of the Court of XVIII Metropolitan Magistrate, Saidapet,
Chennai, have come forward to file both the above criminal original petitions
against one and the same respondent, who is the complainant in both the
matters before the trial Court, praying to call for the records in both the
above Calendar Cases from file of the trial Court and quash the same.

2. Tracing the history of the above criminal original
petitions coming to be filed, the petitioners/accused would submit that the
respondent/complainant has filed both the above calendar cases against the

petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act alleging dishonour of cheques for insufficiency of funds to the extent of Rs.66,000/= in the first case and Rs.60,00 0/= in the second case above; that subsequently, three witnesses have been examined in each case and the above cases are now posted for the examination of the defence witnesses; that under these circumstances, the respondent/complainant has filed a petition before the trial Court under Section 311 of the Cr.P.C. to re-call P.W.1 viz. the representative of the complainant company, which according to these petitioners, to introduce certain new documents and to influx new evidence after cross-examination of P.W.1; that in spite of the petitioners filing a detailed counter stiffly opposing the application, the trial Court, by its order dated 5.9.2002, allowed the said application and therefore the petitioner, contending that he being a permanent resident of Bangalore could not adduce evidence on the defence side immediately and sought time for the same, but the trial Court refused to grant further time for defence witness and posted the matter on 22.1.200 3 and that the complaints themselves are totally unsustainable in law inasmuch as the accused did not issue the cheques in question in favour of the complainant etc., has come forward to file both the above criminal original petitions praying for the reliefs extracted supra.

3. No counter would be filed on the part of the respondent, but the learned counsel for the respondent would argue on instructions and therefore this Court is to pass orders based on the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both.

4. During arguments, the learned counsel appearing on behalf of the petitioners would only reiterate the facts pleaded in the petition with no new facts or circumstances being brought forth or any law pleaded. But, on the contrary, the learned counsel appearing on behalf of the respondent would submit that these are the matters of the year 1999 and that all the witnesses on both sides have been examined and the present stage is that the cases have been posted for the arguments of the respective counsel; that for the last four hearings, nothing was transacted since on the part of the petitioners, they have come forward to initiate the above criminal original petitions and they were last posted on 24.2.2003 for arguments; that enough opportunity was given for both parties to exhaust their remedies; that even now, the petitioners/accused could come and argue the cases so that the trial Court could pronounce the judgment. The learned counsel for the respondent would end up his arguments citing two judgments of the Honourable Apex Court, the first one delivered in RAJENDRA PRASAD vs. THE NARCOTIC CELL THROUGH ITS OFFICER-IN-CHARGE, DELHI reported in 1999(3) Crimes 106 (SC) and the second one delivered in RAJ DEO SHARMA vs. THE STATE OF BIHAR reported in 1999(4) Crimes 52 (SC). In the first judgment cited above, the Honourable Apex Court has held:

"It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 31 1 of the Code or under Section 165 of the Evidence Act by saying that the court could not 'fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be

equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up."

"No party in a trial can be fore-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

In the second judgment cited above, the Honourable Apex Court has held:

"The power of the Court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Even if the prosecution evidence is closed in compliance with the directions contained in the main judgment, it is still open to the prosecution to invoke the powers of the Court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the Court to be essential to the just decision of the case, it is the duty of the Court to summon and examine or recall and re-examine any such person."

On such arguments, the learned counsel for the respondent would ultimately pray to dismiss both the above criminal original petitions as without merit.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to see that the first petitioner firm represented by the second petitioner and the second petitioner himself are the accused in the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act on account of two cheques having returned dishonoured for the reason of 'insufficiency of funds'.

5. The stage of both the cases before the trial Court, as it comes to be seen from the arguments of the learned counsel for the respondent, is that the entire evidence on both sides have been let in and recorded by the Court and in fact at a stage when the cases were posted for the arguments of the learned counsel for both, the petitioners have come forward to file both the above criminal original petitions on ground that it was not right on the part of the lower Court to have admitted an application filed by the respondent/complainant under Section 311 of the Code of Criminal Procedure seeking to re-call P.W.1 for re-examination which was filed only to fill-up the gaps by the respondent/complainant in a motivated manner and the same cannot be permitted in law that too at this belated stage and therefore pleading unreasonableness in allowing the said application by the trial court

and raising certain other factual points, the petitioners have come forward to file both the above criminal original petitions.

6. On the contrary, the two judgments cited by the learned counsel for the respondents, both of the Honourable Supreme Court, are sufficient to hold that not only at any stage a petition of that sort could be allowed and parties permitted to examine or re-examine or cross-examine recalling the witnesses if the Court finds it necessary in the circumstances of the case and essential to the just decision of the case in the interest of justice.

7. Since the main question of entertaining the said application filed by the respondent is answered in the negative and all other points raised by the petitioners/accused that the complaints themselves are totally unsustainable in law as the accused did not issue the cheques in question and that the complainant has manipulated certain blank cheques by affixing their seals on the cheques are the points for the consideration of the trial Court, after due trial, needless to mention that there is no point in permitting any more time to be lost in the processing of the cases before the trial Court, which are reported to be posted for arguments and hence the following order:

In result, both the above criminal original petitions are without merit and they are dismissed as such.

Consequently, Crl.M.P.Nos.751 and 752 of 2003 are also dismissed. However, the trial Court is directed to decide the cases as expeditiously as possible.

26.2.2003.

Index: Yes

Internet: Yes

Rao

To

The XVIII Metropolitan Magistrate,

Saidapet,

Chennai.

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